

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CINDY O’CONNOR,

Plaintiff,

v.

WAL-MART STORES EAST, LP,
Individually and as d/b/a WALMART
WAL-MART STORES EAST, LP,
Individually and as d/b/a WALMART #2210
WALMART STORES EAST, LP,
WAL-MART STORES, INC.,
WAL-MART STORES EAST, INC.,
WAL-MART REAL ESTATE BUSINESS TRUST
WAL-MART STORES EAST, LP #2210,
JOHN DOE CORPORATIONS 1 THROUGH 10

Defendants.

NOTICE OF REMOVAL

Case №.

PLEASE TAKE NOTICE that defendants Wal-Mart Stores East, LP, (incorrectly sued as “Wal-Mart Stores East, LP, Individually and as d/b/a Walmart,” “Wal-Mart Stores East, LP, Individually and as d/b/a Walmart #2210,” and “Wal-Mart Stores East, LP #2210), Walmart Inc. f/k/a Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., and Wal-Mart Real Estate Business Trust (collectively, “Removing Defendants”), by their attorneys, Bennett Schechter Arcuri & Will LLP, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this Notice of Removal of the action styled *Cindy O’Connor, Plaintiff, versus Wal-Mart Stores East, LP, Individually and et al., Defendants*, Index №. 815631/2019 (the “Action”), from the Supreme Court of the State of New York, County of Erie, to the United States District Court for the Western District of New York.

In support thereof, Removing Defendants state:

1. On or about November 21, 2019, Plaintiff Cindy O’Connor (hereinafter,

“Plaintiff”) commenced the Action by filing a Summons and Complaint in the Supreme Court of the State of New York, County of Erie, against the Removing Defendants. A copy of the Summons and Complaint is attached hereto and incorporated herein by reference as **Exhibit A**.

2. On January 23, 2020, Removing Defendants appeared in the Action by serving their Answer, a copy of which is attached hereto and incorporated herein by reference as **Exhibit B**.

3. After the commencement of the action, and in accordance with N.Y. CPLR 3017(c), Removing Defendants served a Request for Supplemental Demand for Relief on the Plaintiff, a copy of which is attached and incorporated herein by reference as **Exhibit C**.

4. The Removing Defendants made numerous requests to Plaintiff for a response to Removing Defendants’ Supplemental Demand for Relief. Copies of Removing Defendants’ requests to Plaintiff are attached herein by reference as **Exhibit D**.

5. Two pre-trial conferences were also held in the Supreme Court of the State of New York, County of Erie, with Honorable Mark J. Grisanti, where the Plaintiff was directed to serve responses to the Removing Defendants’ discovery demands, including Defendants’ Supplemental Demand for Relief.

6. On December 3, 2020, Removing Defendants received a response to Plaintiff’s Supplemental Demand for Relief, seeking Five Million Dollars (\$5,000,000.00) in damages in this action, a copy of which is attached herein by reference as **Exhibit E**.

7. According to Plaintiff’s Complaint, Plaintiff Cindy O’Connor is an individual domiciled in the State of New York and, therefore, for the purposes of this Notice of Removal, is a citizen of the State of New York. *See* Ex. A.

8. Removing Defendant Wal-Mart Stores East, LP, (incorrectly sued as “Wal-

Mart Stores East, LP, Individually and as d/b/a Walmart,” “Wal-Mart Stores East, LP, Individually and as d/b/a Walmart #2210,” and “Wal-Mart Stores East, LP #2210”), is a limited partnership organized under the laws of the State of Delaware. The only partners of Wal-Mart Stores East, LP are general partner WSE Management, LLC and limited partner WSE Investment, LLC, both of which are limited liability companies organized under the laws of the State of Delaware. The sole member of both WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC, a limited liability company organized under the laws of the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart Inc., a corporation organized under the laws of the State of Delaware, with a principal place of business in the State of Arkansas. The principal place of business for all of the foregoing entities (Wal-Mart Stores East, LP; WSE Management, LLC; WSE Investment, LLC; Wal-Mart Stores East, LLC; and Walmart Inc.) is in the State of Arkansas. Accordingly, for the purposes of this Notice of Removal, Defendant Wal-Mart Stores East, LP is a citizen of the States of Delaware and Arkansas.

9. Removing Defendant Walmart Inc. f/k/a as Wal-Mart Stores, Inc. is a corporation organized under the laws of the State of Delaware, with a principal place of business in the State of Arkansas and, therefore, for the purposes of this Notice of Removal, is a citizen of the States of Delaware and Arkansas.

10. Removing Defendant Wal-Mart Stores East, Inc., is now known as Wal-Mart Stores East, LLC, which is a limited liability company organized under the laws of the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart, Inc., which is a corporation organized under the laws of the State of Delaware with a principal place of business located in Arkansas. Therefore, for the purposes of this Notice of Removal, Defendant Wal-Mart Stores East, LLC, incorrectly sued as Wal-Mart Stores East, Inc., is a citizen of the States of

Delaware and Arkansas.

11. Removing Defendant Wal-Mart Real Estate Business Trust is a real estate business trust organized under the laws of the State of Delaware. The only Trustee and the only Beneficial Owner of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co., which is a corporation organized under the laws of the State of Delaware with a principal place of business in the State of Arkansas. Therefore, for the purposes of this Notice of Removal, Defendant Wal-Mart Real Estate Business Trust is a citizen of the States of Delaware and Arkansas.

12. John Doe Corporations 1 through 10 are also named as defendants in the Action. As “John Doe Corporation” is a fictitious name, pursuant to 28 U.S.C. § 1441(b)(1), the citizenship of John Doe Corporations 1 through 10 shall be disregarded for the purposes of this Notice of Removal.

13. This Court has original subject matter jurisdiction over the Action pursuant to 28 U.S.C. §§1332(a) and 1441(b), because (a) there is complete diversity of citizenship among the parties; (b) the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs; and (c) none of the parties in interest who are properly joined and served as Defendants are citizens of New York State. The Action may, therefore, be removed pursuant to 28 U.S.C. § 1441(b).

14. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) and (c).

15. Pursuant to 28 U.S.C. §1446(b)(2), all defendants who have been properly joined and served join in and consent to the removal of the Action.

16. Pursuant to 28 U.S.C. §1441(a), removal venue exists in the United States District Court for the Western District of New York because the Supreme Court, Erie County (the Court in which the Action was originally filed) is within the jurisdiction of the Western District of

New York.

17. Pursuant to 28 U.S.C. §1446(a), all process, pleadings, and orders served to date upon the Removing Defendants are appended hereto. Pursuant to Local Rule 81(a)(3), an index of all documents filed in the state court action is attached hereto as **Exhibit F**.

18. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being served upon the Plaintiff and is being filed with the Clerk of the Supreme Court, Erie County. *See* Notice of Filing of Notice of Removal, with Affidavit of Service, attached hereto as **Exhibit G**.

19. Removing Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Removing Defendants request that the case styled *Cindy O'Connor, Plaintiff, versus Wal-Mart Stores East, LP, Individually and et al., Defendants*, Supreme Court of the State of New York, County of Erie, Index №. 815631/2019, be removed to this Court, and that this Court take subject matter jurisdiction over this Action.

Dated: Buffalo, New York
December 4, 2020

Yours, etc.,

/s/ Pauline C. Will

BENNETT SCHECHTER
ARCURI & WILL LLP

By: Pauline C. Will, Esq.
Sarah E. Schulz, Esq.

Attorneys for Removing Defendants
701 Seneca Street, Suite 609
Buffalo, New York 14210
Telephone (716) 242-8100
pwill@bsawlaw.com
sschulz@bsawlaw.com

To: Jason C. Luna, Esq.
JASON C. LUNA, PLLC
Attorney for Plaintiff
4535 Southwestern Blvd, Suite 804B
Hamburg, New York 14075
Telephone (716) 648-6666
jasonluna@jasonluna.net